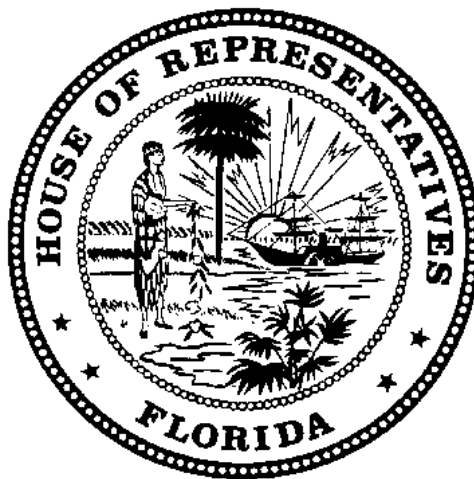


# **Salvia Divinorum**

**December 2007**



**The Florida House of Representatives  
Marco Rubio, Speaker**

**Introduction:** This report will discuss the effect of the hallucinogenic herb *Salvia divinorum* on users and the prevalence of its use. The report will describe relevant Florida statutes in chapter 893 relating to drugs and evaluate how *Salvia* would fit into Florida's drug schedules. The report will also describe legislation passed by other jurisdictions and outline actions that can be taken by the Florida legislature.

**Description of substance:** *Salvia divinorum*<sup>1</sup> (*Salvia*) is a perennial herb in the mint family that is native to Oaxaca, Mexico. The Mazatec Indians of Mexico have used the plant in healing rituals.<sup>2</sup> The active component is the hallucinogen salvinorin A. *Salvia divinorum* has recently begun to be used as a recreational drug in this country.<sup>3</sup> As discussed further below, no state or federal statute regulates the sale, purchase or possession of *Salvia divinorum* or salvinorin A in Florida. According to the Drug Enforcement Administration, "neither *Salvia divinorum* or active constituent salvinorin A has an approved medical use in the United States."<sup>4</sup> *Salvia* has a hallucinogenic affect on the user when ingested.

*Salvia* is readily available for purchase on the Internet. Numerous websites purport to sell *Salvia* plants, leaves or liquid salvinorin A extract. The extract is sold in a variety of concentrations. Dried *Salvia* leaves are also sold with an enhanced level of salvinorin A. These are often referred to as "5x", "10x" or "20x" to indicate that they are 5, 10 or 20 times stronger than the untreated leaf. These labels are not necessarily an accurate measure of the potency of the *Salvia* as there are no generally accepted standards or regulation of the process of extraction.

*Salvia* can be ingested using one of several different methods. When *Salvia* leaves are chewed, the substance begins to affect the user within 5 to 10 minutes.<sup>5</sup> More commonly, *Salvia* leaves or salvinorin A extract are smoked. A dose of "200 to 500 micrograms [of salvinorin A] produces profound hallucinations when smoked."<sup>6</sup> When smoked, the substance begins to affect the user almost immediately.<sup>7</sup> Users experience hallucinations whose intensity and duration depend on the amount and strength of the substance ingested. *Salvia* can affect "motor co-ordination, balance as well as awareness of surroundings."<sup>8</sup> Although experiences vary depending on the user, the National Drug Intelligence Center describes use of the substance as follows:

Immediately after ingesting the drug, abusers typically experience vivid hallucinations—including out-of-body experiences, sensations of traveling through time and space, and feelings of merging with inanimate objects. Some abusers experience intense synesthesia, an effect that causes the abusers' senses to become confused. For example, abusers may describe hearing colors or smelling sounds. The hallucinogenic effects generally last 1 hour or less unlike other hallucinogens like LSD and PCP. High doses of the drug can cause unconsciousness and short-term memory loss.<sup>9</sup>

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<sup>1</sup> There are nearly 1000 species of *Salvia* – this report is specific to the plant known as *Salvia divinorum*. Although other *salvia* plants can have a pharmacological effect, *salvia divinorum* is the only plant that has been shown to have a hallucinogenic effect when ingested. Grundmann O, Phipps SM, Zadezensky I, Butterweck V, (2007) *Salvia divinorum* and Salvinorin A: An Update on Pharmacology and Analytical Methodology, *Planta Med* 73: 1040; Prisinsano, T., (2005) Psychopharmacology of the hallucinogenic sage *Salvia divinorum*, *Life Sciences* 78: 527

<sup>2</sup> Microgram Bulletin, Volume XXXVI, No. 6, June 2003, pg. 122, Selected Intelligence Brief, Information Bulletin: *Salvia Divinorum*. <http://www.usdoj.gov/dea/programs/forensicsci/microgram/mg0603/mg0603.html>

<sup>3</sup> Appel, J., Dohee, K., The Rise of a New Psychoactive Agent: *Salvia divinorum*, *Int. J. Ment. Health Addiction* (2007) 5: 248-253 (indicating that "since the early 1990's, there has been a rise in the recreational use" of *Salvia*).

<sup>4</sup> Office of Diversion Control, Drug Enforcement Administration, Department of Justice, Drugs and Chemicals of Concern: *Salvia divinorum* and Salvinorin A. (August 2007); [http://www.deadiversion.usdoj.gov/drugs\\_concern/salvia\\_d/salvia\\_d.htm](http://www.deadiversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm)

<sup>5</sup> *Id.*

<sup>6</sup> Drug Enforcement Administration, Newark Division, *Salvia divinorum, aka Maria Pastora, Salvia* (September 2002); [http://www.usdoj.gov/dea/pubs/states/newsrel/newark\\_intel\\_bulletin\\_salvia.html](http://www.usdoj.gov/dea/pubs/states/newsrel/newark_intel_bulletin_salvia.html)

<sup>7</sup> Grundman, O, *supra* note 1.

<sup>8</sup> Appel, J., *supra* note 3, page 251.

<sup>9</sup> Microgram Bulletin, *supra*, note 2.

The National Institute on Drug Abuse characterizes use of the substance as follows:<sup>10</sup>

Effects include psychedelic-like changes in visual perception, mood, and body sensations; emotional swings; feelings of detachment; and importantly, a highly modified perception of external reality and the self, which leads to a decreased ability to interact with one's surroundings. This last effect has promoted concerns about the dangers of driving under the influence of salvinorin.<sup>11</sup>

Studies have not been done on the long term effects of Salvia abuse. According to the National Drug Intelligence Center:

[I]nformation provided by abusers indicates that the negative long-term effects of Salvia divinorum may be similar to those produced by other hallucinogens such as LSD (lysergic acid diethylamide) including depression and schizophrenia. Some abusers also indicate that long-term abuse can cause hallucinogen persisting perception disorder, or "flashbacks". Numerous individuals report experiencing negative effects during their first experience with Salvia divinorum and indicate that they would not use it a second time. Some others report that the drug caused them to become introverted and sometimes unable to communicate clearly.<sup>12</sup>

Many websites contain videos of people who claim to be documenting their experience using Salvia. For example, typing the term "Salvia" into the search engine of the popular website "Youtube.com", yields more than 3,000 results. Social networking websites host "groups" devoted to Salvia. There are more than one hundred groups on Facebook and more than a dozen groups on MySpace related to Salvia.

Other websites tout the benefits of using Salvia as an enjoyable, legal alternative to other illegal substances and provide specific information on how to use Salvia. These sites contain recommendations which they claim will allow a person to safely use the product.<sup>13</sup> Recommendations include choosing a quiet, familiar location to ingest the substance and having another person present. This other person is often referred to as a "sitter" and is intended to protect the Salvia user from physically injuring themselves or others or from being victimized by others. These websites generally oppose the regulation of the substance. They claim that the substance is non-addictive and harmless if used correctly. Recognizing that an increased number of jurisdictions have regulated Salvia divinorum in the past several years, some websites advocate purchasing Salvia while it is still legal to do so.

**Prevalence of Use:** At present, there is no reliable information on how widespread the use of Salvia is in this state or nationwide. The National Institute on Drug Abuse states that "[t]here are no available estimates of Salvia abuse, but a recent increase in Salvia-related media reports and Internet traffic suggest the possibility of an increase in the level of Salvia abuse in the United States and Europe."<sup>14</sup> Several factors contribute to the lack of information on the prevalence of salvia use including the following:

1. **Scope of surveys:** The National Survey on Drug Abuse and Health is conducted annually by federal agencies to determine the prevalence of drug use among people age 12 or older nationally and in

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<sup>10</sup>National Institute on Drug Abuse, *NIDA Info Facts : Salvia* (October 2007); <http://www.drugabuse.gov/Infofacts/salvia.html>

<sup>11</sup> Section 316.193, F.S. prohibits driving under the influence of alcoholic beverages, chemical substances set forth in s. 877.111 or any substance controlled under chapter 893. Because salvia does not fit into any of these categories, a person cannot be charged with driving under the influence of salvia. If the person was driving recklessly or carelessly, other criminal charges could apply.

<sup>12</sup> Microgram Bulletin, *supra* note 2.

<sup>13</sup> See, e.g.: <http://www.sagewisdom.org/faq.html>; [http://www.erowid.org/plants/salvia/salvia\\_faq.shtml#whynew](http://www.erowid.org/plants/salvia/salvia_faq.shtml#whynew)

<sup>14</sup> National Institute on Drug Abuse, *supra* note 10; <http://www.drugabuse.gov/Infofacts/salvia.html>

each state.<sup>15</sup> Currently, the survey does not contain questions regarding Salvia use. However, the Department of Health and Human Services has proposed adding questions relating to the use of Salvia to the 2008 survey.<sup>16</sup> Assuming that this proposal is adopted and the survey is expanded, information on Salvia use on a national and state level will be available in 2009.<sup>17</sup>

State surveys also do not ask about Salvia use. Several state agencies conduct the Florida Youth Substance Abuse Survey. This survey asks middle school and high school students about their illegal drug use as well as their use of alcohol and tobacco (which are illegal for minors to possess).<sup>18</sup> The survey does not contain a question about Salvia use.

In October 2007, researchers at San Diego State University released the results of a survey completed by 1,571 students at that school. Overall, 4.4% of survey participants reported using Salvia in the prior year. This compares with 5.5 % of students reporting ecstasy use, 7.1% reporting cocaine use and 34.9% reporting marijuana use. More than 10% of students who reported using illegal drugs (such as cocaine, marijuana or ecstasy) reported that they had also used Salvia.<sup>19</sup>

2. Legal status: The fact that it is currently not illegal to sell, use or possess Salvia or salvinorin A in this state means that law enforcement would not arrest someone found to be in possession of Salvia unless they were otherwise violating the law. Therefore, there is no available information from law enforcement on how often they encounter the substance. According to responses to staff inquiries, several local law enforcement agencies reported that the substance is sold in “head shops” and “hookah lounges”, in their jurisdiction.

Again, because the substance is not illegal to possess in Florida, it is unlikely that the substance would be sent to a drug lab for testing. An intelligence brief published by the Drug Enforcement Administration indicates that in 2003, the Miami-Dade Police Department Crime Laboratory received a small amount of Salvia divinorum that was seized from a student by a school resource officer. The brief indicated that this was the crime laboratory’s first submission of the material.<sup>20</sup> According to the Florida Department of Law Enforcement’s (FDLE) response to a Senate survey, the Miami-Dade Crime Laboratory has not encountered the substance since 2003.<sup>21</sup> The FDLE indicated that they are unaware of any instances of Salvia divinorum being submitted to one of the seven FDLE laboratories.<sup>22</sup>

3. Limitations in current toxicology screenings: Common toxicology screenings do not test for the presence of Salvia.<sup>23</sup> As a result, no information is available on whether the substance has been

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<sup>15</sup> Office of Applied Studies, Substance Abuse and Mental Health Services Administration, *2006 National Survey on Drug Abuse & Health*; <http://www.oas.samhsa.gov/nsduhLatest.htm>

<sup>16</sup> 72 Fed. Reg. 24592 (May 3, 2007); 72 Fed. Reg. 43289 (August 3, 2007).

<sup>17</sup> The 2006 survey was released in September 2007.

<sup>18</sup> See Florida Youth Substance Abuse Survey results, <http://www.dcf.state.fl.us/mentalhealth/publications/fysas/>

<sup>19</sup> Lange, J.E. et al, *College Student Use of Salvia Divinorum*, (October 2007)

<http://www.aodinitiatives.org/iprevention/reports/reports.html>

<sup>20</sup> Microgram Bulletin, Vol. XXXVI, No. 8, August 2003, pg 177

<http://www.usdoj.gov/dea/programs/forensicsci/microgram/mg0803/mg0803.html>

<sup>21</sup> As part of an interim project, staff of the Senate Criminal Justice Committee surveyed several state agencies regarding Salvia divinorum including the Florida Department of Law Enforcement and the Department of Health as well as the Office of Drug Control within the Executive Office of the Governor. The Senate staff also surveyed a number of medical professionals and researchers for their input. The results of these surveys were shared with the staff of this committee and are on file with this committee. Information from these surveys was used as background material for this report.

<sup>22</sup> This response includes information provided by the Broward County Crime Laboratory, the Indian River County Laboratory, Palm Beach County Crime Laboratory, Pinellas County Crime Laboratory, Miami Dade Crime Laboratory as well as the Florida Department of Law Enforcement Crime Laboratory.

<sup>23</sup> See generally, Grundman, O., *supra* note 1.

present during autopsies performed in the state. Likewise, if a person sought medical treatment while experiencing the effects of Salvia, the substance would not be detected in their system. Because the duration of the effects of the substance is relatively brief, if a person sought medical treatment while experiencing the effects of the substance, the effects may have subsided by the time treatment is given. Further, it is unlikely that emergency room physicians or other medical personnel would recognize signs of Salvia use.

These factors make it difficult to determine whether Salvia is being commonly used in this state. If it is being used on a widespread basis, there is no reported evidence that users are suffering physical harm requiring medical attention or are committing other crimes or otherwise acting as a danger to others.

**Drug schedules:** Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five different categories, known as schedules, in order to regulate the manufacture, distribution, preparation, and dispensing of the substances.<sup>24</sup> Pursuant to chapter 893, the drug schedules are distinguished as follows:

- Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States and its use under medical supervision does not meet accepted safety standards. Cannabis and heroin are examples of Schedule I drugs.
- Schedule II drugs have a high potential for abuse and a severely restricted medical use and abuse of the substance may lead to severe psychological or physical dependence. Cocaine and morphine are examples of Schedule II drugs.
- Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have an accepted medical use and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. Substances listed in Schedule III include anabolic steroids and codeine.
- Schedule IV substances have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in treatment and abuse of the substance may lead to limited physical or psychological dependence. Substances in Schedule IV include phenobarbital, librium, and valium.
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in treatment and abuse of the substance may lead to limited physical or psychological dependence. Substances in Schedule V include certain stimulants and narcotic compounds.

According to s. 893.03, F.S., the distinguishing factors between the different drug schedules are the potential for abuse of the substances contained therein and whether there is a currently accepted medical use for the substances. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States. Salvia does not have a currently accepted medical use in this country which indicates that based on this factor, a Schedule I classification may be appropriate. The question then is whether it has a “high potential for abuse”. The term “potential for abuse” is defined as follows:<sup>25</sup>

Potential for abuse means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being:

- (a) Used in amounts that create a hazard to the user's health or the safety of the community;
- (b) Diverted from legal channels and distributed through illegal channels; or
- (c) Taken on the user's own initiative rather than on the basis of professional medical advice.

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<sup>24</sup> s. 893.03, F.S.

<sup>25</sup> s. 893.02(18), F.S.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

Evaluating Salvia on the basis of paragraph (c) above, because there is no currently accepted medical use for salvia, by default, when it is used, it is being taken on the user's own initiative and not on the basis of professional medical advice. When considering paragraph (a) above, even if data does not exist which would support the fact that Salvia is currently used in amounts that create a hazard to the user's health or the safety of the community other than in isolated or occasional instances, there are several factors related to the nature and properties of the substance that may make it reasonable to assume that there is a substantial likelihood that such activities will take place including:

- The intense hallucinogenic effect of using even a small amount of the substance;
- The possibility of harm to the users or others that could occur while the user is under the effect of the substance;<sup>26</sup>
- The widespread media attention to the substance which may result in its increased popularity;
- The proliferation of websites devoted to promotion of the substance as a legal, safe alternative to other hallucinogens;<sup>27</sup>
- The ready availability of Salvia on the Internet;
- The lack of uniformity in strength of the substance which leads to inconsistency in dosage.

In response to a survey by staff of the Senate Criminal Justice Committee, the Department of Health stated the following:

The Department of Health supports the listing of Salvia divinorum or Salvinorin A in Schedule I of Chapter 893, F.S. There is an increase in the reported abuse of this substance. Studies indicate that Salvia divinorum or Salvinorin A may be the most potent naturally occurring hallucinogen. The listing of Salvia divinorum or Salvinorin A in Schedule I is proactive protection of the health and safety of Florida's citizens, especially our youth.

The Office of Drug Control has indicated that it supports including Salvia as a Schedule I drug.

Section 893.13, F.S., provides penalties for various drug offenses depending on the type and quantity of the controlled substance involved and whether the controlled substance is possessed, sold, manufactured, delivered or purchased as well as the location of the sale, manufacture or delivery. If the amount of controlled substance possessed, sold, manufactured, purchased or delivered is of a specified quantity, the offense is considered drug trafficking and the penalties in s. 893.135, F.S., apply. The type and quantity of controlled substance sold, purchased, manufactured or delivered - in other words, trafficked - dictates the penalties that apply.

The possession of Schedule I hallucinogens such as LSD and peyote is punishable as a third degree felony.<sup>28</sup> Possession of less than 20 grams of cannabis is a first degree misdemeanor.<sup>29</sup>

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<sup>26</sup> One researcher characterizes the risk as follows:

The risk posed to the user can be quite significant. Even simple tasks such as walking down stairs could be dangerous if the effect is pronounced. Certainly more complex tasks, such as driving a car or operating machinery under the influence of *S. divinorum* could be quite disastrous." Appel, J. *supra* note 3 at p. 251

<sup>27</sup> According to a journal article documenting the content of websites relating to Salvia:

Of particular concern is the fact that many Internet [websites] are exploiting the relative paucity of data on [Salvia] as evidence for its safety.

Hoover, V. et al, *Internet access to Salvia divinorum: Implications for policy, prevention, and treatment*, Journal of Substance Abuse Treatment (July 2007).

In Fiske v. State, 366 So.2d 423 (Fla. 1978), the defendant was arrested for possessing a bag of wild mushrooms. Tests indicated that the mushrooms contained psilocybin, a controlled substance. The defendant was found guilty of possession of psilocybin. The Florida Supreme Court noted that the statute at issue did not indicate what types of mushrooms contain psilocybin and held that the statute was unconstitutional as applied to the defendant because:

[T]he statute does not advise a person of ordinary and common intelligence that [psilocybin] is contained in a particular variety of mushroom. The statute, therefore, may not be applied constitutionally to appellant. It does not give fair warning that possession of the mushrooms possessed by appellant is a crime.

Based on the holding in the Fiske case, if the legislature chooses to make salvinorin A a controlled substance, it would be advisable to also make Salvia divinorum a controlled substance. This would avoid a constitutional challenge by a person found to be in possession of Salvia divinorum leaves based on a claim that the statute did not advise a person that Salvia divinorum contained salvinorin A.

**Possible exceptions to scheduling:** According to media reports, concern has been raised that placing Salvia in Schedule I would impair the ability of the substance to be used in research. Salvinorin A does not affect the same receptors in the brain as other hallucinogens.<sup>30</sup> For this reason, some researchers believe that there is a possibility that salvinorin A could have potential in the treatment of Alzheimer's disease and schizophrenia.<sup>31</sup> However, Florida law already includes a research exception. In pertinent part, s. 893.13(9), F.S. provides that the criminal penalties contained in the section are not applicable to possession of a controlled substance for:

medical or scientific use or purpose only.....by, persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

- (a) Pharmacists.
- (b) Practitioners.
- (c) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

It appears that this exception would apply to medical research which may be conducted in the state and would allow research to proceed.

Several websites claim that Salvia divinorum is commonly cultivated for landscaping uses and for that reason should not be regulated. There appears to be confusion between Salvia divinorum and other forms of Salvia which are used in landscaping. Committee staff contacted staff of the Division of Plant Industry within the Florida Department of Agriculture and Consumer Services who indicated that they were not aware of Salvia divinorum being used in the nursery trade. Similarly, a representative of the Florida Nursery Growers and Landscape Association indicated that they were not aware of any members who were growing or selling Salvia divinorum. Therefore, it does not appear that if the substance were regulated within the state that it would have any affect on this industry.

**Prior state legislative action:** On March 20, 2007, the Board of County Commissioners of Miami-Dade County adopted a resolution requesting that the State of Florida add Salvia divinorum and salvinorin A to

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<sup>28</sup> s. 893.13(6)(a), F.S.

<sup>29</sup> s. 893.13(6)(b), F.S.

<sup>30</sup> Hallucinogens such as LSD and mescaline bind to the serotonin receptors in the brain while salvinorin A binds to the kappa-opioid receptor. Prisinsano, *supra* note 1.

<sup>31</sup> Grundmann O, *supra* note 1.

Schedule I of the Florida Comprehensive Drug Abuse Prevention and Control Act.<sup>32</sup> The resolution contained a number of “whereas” clauses which provided justification for scheduling of the drug. The “whereas” clauses did not contain any specific information indicating that the substance was being abused in Miami-Dade County or elsewhere in the state.

During the 2007 session, SB 1718 was filed which related to the use or possession of drug paraphernalia used to produce methamphetamine. In response to the Miami-Dade County resolution, when the bill was heard in the Senate Judiciary Committee, language was added in order to include Salvinorin A within Schedule I of the drug schedules. The Senate bill died in the Committee on Criminal and Civil Justice Appropriations. SB 340 which places Salvia divinorum and salvinorin A in Schedule I, has been pre-filed for the 2008 legislative session. The bill is sponsored by Senator Lynn. No companion House bill has been filed.

**Federal approach:** Neither Salvia divinorum nor salvinorin A is listed within the federal Controlled Substances Act.<sup>33</sup> The Drug Enforcement Administration includes Salvia divinorum and salvinorin A in its list of “Drugs and Chemicals of Concern” and is considering classifying Salvia as a Schedule I drug.<sup>34</sup> In 2002, federal legislation was filed to place Salvia divinorum and salvinorin A within Schedule I of the Controlled Substances Act. Congress adjourned without the bill being passed.<sup>35</sup> No similar legislation has been filed since that time.

**Other jurisdictions:** As discussed further below, in 2005, Louisiana became the first state to regulate the sale or possession of Salvia divinorum. As of October 1, 2008, eight states have passed legislation criminalizing the sale, consumption, possession or purchase of Salvia divinorum or salvinorin A in some manner. These states have taken a variety of approaches to the issue.

- North Dakota and Missouri placed Salvia divinorum and salvinorin A within Schedule I.<sup>36</sup>
- Maine made it a civil violation, punishable by up to \$1,500 to sell Salvia divinorum or salvinorin A to a minor. The act made it a civil violation for a minor to purchase, possess or use Salvia divinorum. The act also made it a civil violation to use false identification in an attempt to purchase Salvia divinorum.<sup>37</sup>
- Illinois placed Salvia divinorum and any extract from the plant within Schedule I.<sup>38</sup>
- Tennessee made it a misdemeanor to knowingly produce, manufacture, distribute or possess the active chemical ingredient in Salvia divinorum. This statute provides an exception for the possession, planting, cultivation, growing, or harvesting of the plant for aesthetic, landscaping or decorative purposes. The bill also provides an exception for any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the federal Food and Drug Administration as a homeopathic drug.<sup>39</sup>

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<sup>32</sup> <http://www.miamidade.gov/govaction/matter.asp?matter=070579&file=true&yearFolder=Y2007>

<sup>33</sup> 21 U.S.C 812

<sup>34</sup> [http://www.deadiversion.usdoj.gov/drugs\\_concern/salvia\\_d/salvia\\_d.htm](http://www.deadiversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm); <http://www.drugabuse.gov/Infofacts/salvia.html> =

In response to the Senate staff survey, the Florida Office of Drug Control indicated that they had been informed that the DEA has completed their analysis of salvinorin A and will be sending documentation to the Department of Health and Human Services to begin the scheduling process. There is no deadline for a response from that department.

<sup>35</sup> HR 5607 – Hallucinogenic Control Act of 2002.

<sup>36</sup> ND ST 19-03.1-05; V.A.M.S. 195.017

<sup>37</sup> Public Law 120, 123<sup>rd</sup> Maine Legislature.

<sup>38</sup> 720 ILCS 570/204

<sup>39</sup> T.C.A. s. 39-17-438



- Oklahoma’s law provides that prima facie evidence that a substance containing *Salvia divinorum* has been enhanced, concentrated or chemically or physically altered gives rise to a rebuttable presumption that the substance is a synthetic controlled substance.<sup>40</sup> Oklahoma law makes it a felony to manufacture or distribute a synthetic controlled substance.<sup>41</sup>
- Delaware added *Salvia divinorum* to Schedule I.<sup>42</sup>
- Louisiana<sup>43</sup> added *Salvia divinorum* to a section of statute which makes it unlawful for any person to knowingly or intentionally produce, manufacture, distribute or possess a material, compound, mixture or preparation intended for human consumption that contains a hallucinogenic plant. The offense is punishable by a term of imprisonment up to five years. This statute provides an exception for the possession, planting, cultivation, growing, or harvesting of the plant for aesthetic, landscaping or decorative purposes. The bill also provides an exception for any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the federal Food and Drug Administration as a homeopathic drug.

In addition, legislation has been filed in the state legislatures of the following states: Alabama, Alaska, California, Georgia, Iowa, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Wisconsin and Wyoming. Most of these bills placed *Salvia divinorum* and salvinorin A within Schedule I. These bills have either failed to pass or are still pending at the time of this writing.

**Options:** The legislature could take one of several approaches to *Salvia*:

1. Schedule substance: If it determines that there is a high potential for abuse of *Salvia*, the legislature could follow the lead of several other states and include *Salvia divinorum* and salvinorin A within Schedule I. If these substances were placed within the same part of Schedule I as other hallucinogens, possession of *Salvia* would be a third degree felony. The legislature could choose to make possession of *Salvia* a first degree misdemeanor, similarly to the manner in which the possession of cannabis is treated.
2. No action: The legislature could choose to take no action and wait for further information to become available which will better allow it to evaluate the potential for abuse of *Salvia*. Floridians would continue to be able to sell, purchase or use *Salvia* legally. If *Salvia* use becomes a widespread problem while the legislature was not in session, the Attorney General has the statutory authority to add a substance to a drug schedule by way of administrative rule if he or she finds that it has a potential for abuse.<sup>44</sup>
3. Treat in manner similar to tobacco or alcohol: The legislature could choose to make it illegal to sell *Salvia* to those under a certain age - similar to the way that tobacco and alcohol are treated.

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<sup>40</sup> 63 Ok.St.Ann. s. 2-101

<sup>41</sup> 63 Ok.St.Ann. s. 2-401

<sup>42</sup> 16 Del.C. s. 4714; This law was known as “Brett’s Law” and was named after a teenager who committed suicide. His parents believe that his use of *salvia divinorum* contributed to his death. Their son had claimed that because *Salvia* could be legally purchased, it must be safe to use. Chalmers, M. (2006, February 26) Legal high new worry for parents-LSD-like her blamed in Delaware teen’s suicide, *News Journal (Wilmington, DE)*, pp. A1, A13.

<sup>43</sup> LSA-R.S. 40:989.1

<sup>44</sup> s. 893.035, F.S